

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
A VARIANCE PERMIT GRANTED  
TO W. S. SEVERNS BY CITY OF  
SEATTLE AND DENIED BY THE  
DEPARTMENT OF ECOLOGY,

W. S. SEVERNS AND CITY OF  
SEATTLE,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
and WILLIAM G. STONE, et ux.

Respondents.

SHB No. 80-2

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, an appeal from the partial approval of a shoreline variance application by the City of Seattle, and disapproval of same by the State Department of Ecology came before the Shorelines Hearings Board, William A. Harrison, Hearing Examiner, presiding in Seattle, Washington, on March 13, 1980. Appellant W. S. Severns appeared and represented himself. Appellant City of Seattle was represented by

1 supports decks extending 5 more feet waterward. Two finger docks  
2 extend 27 and 19 feet further waterward. The over water structures  
3 would rest on piling. Such construction is typical in the area, and  
4 both adjacent lots presently have homes constructed partially over the  
5 water, on piling, with decks, just as Severns proposes. The waterward  
6 edge of Severn's house and decks would not go beyond, respectively, a  
7 line connecting the waterward edge of the adjacent houses and a  
8 similar line connecting the waterward edge of the adjacent decks.  
9 Severn's proposed docks would not go beyond a line connecting his  
10 northerly neighbor's (Stone's) docks and his southerly neighbor's  
11 (Gill's) house. The proposed development would cover 39% of  
12 appellant's lot.

## II

14 Severn's lot is designated urban residential (U-R) to the water's  
15 edge and waterward of that is designated conservancy management (C-M)  
16 in the City's Shoreline Master Program (hereinafter "SSMP"). The SSMP  
17 states that the purpose of the U-R environment is to protect areas  
18 appropriate primarily for residential uses, by maintaining the  
19 existing residential character in terms of bulk, scale, and general  
20 types of activities and developments. SSMP Section 21A.23. Under the  
21 SSMP, developments in the C-M environment are limited to those uses  
22 which are non-consumptive of the resources identified as being  
23 valuable and requiring protection. SSMP Section 21A.22.  
24 Single-family residential uses are permitted in the U-R environment;  
25 such uses are prohibited in the C-M environment. SSMP Section  
26 21A.40. Piers are allowed in the C-M and U-R environments. SSMP

1 area covered with over the water structures. The proposed piling may  
2 improve the quality of fishing from adjacent water areas.

3 V

4 Any Conclusion of Law which should be deemed a Finding of Fact is  
5 hereby adopted as such.

6 From these Findings the Board makes these

7 CONCLUSIONS OF LAW

8 I

9 Because the application herein is for a substantial development it  
10 is tested for consistency with the provisions of chapter 90.58 RCW,  
11 the Shoreline Management Act, and the SSMP. RCW 90.58.140(2)(b).

12 The City contends that a variance from the SSMP is not needed to  
13 allow new residential construction over water in this case. Rather it  
14 has allowed such construction, to no more than 25 feet waterward of  
15 the water's edge, in reliance upon its Zoning Ordinance Section  
16 4.13(c) which provides:

17 "Where a zone boundary line parallel or  
18 approximately parallel to a street divides a lot  
19 between two zones, with street frontage in the  
20 more intensive zone, then the provisions of this  
21 Ordinance covering the more intensive zoned  
22 portion of such lot may be extended to the entire  
23 lot, or for twenty-five (25) feet from such zone  
24 boundary line whichever is the lesser distance."

25 The above Zoning Ordinance Section 4.13(c) is not incorporated by  
26 reference in the SSMP. While the SSMP is declared supplemental to the  
27 Zoning Ordinance, the latter, including Section 4.13(c), has not been  
approved by respondent DOE. We conclude that Section 4.13(c) is not  
part of the SSMP, see RCW 90.58.100(1), and thus does not govern

Article when there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the shoreline master program. A shoreline variance will be granted only after the applicant can demonstrate the following:

(a) That if he complies with the provisions of the master program, he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not a sufficient reason for a variance.

(b) That the hardship results from the application of the requirements of the Act and shoreline master programs, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the variance granted will be in harmony with the general purpose and intent of the shoreline master program.

(d) That the public welfare and interest will be preserved.

In authorizing a shoreline variance, the Director may attach thereto such conditions regarding the location, character or other features of a proposed structure or use as may be deemed necessary to carry out the spirit and purpose of this Article and in the public interest.

The strict letter of the SSMP prohibits new, residential structures constructed over water, Section 21A.72, and prohibits single family residential uses in the conservancy environment of the water, Section 21A.40. The application of those sections of the SSMP to the subject property creates an unnecessary hardship.

a) If Severns is denied a use variance his use will be confined by the SSMP to construction of a home upon the small (50' wide and 25' deep) upland portion of his lot on a 35 degree slope. This would not give him a reasonable use of the residential lot. Moreover, the lakeward view of the lot would be severely restricted by homes which have been constructed a substantial distance over water on both of the

1 In summary, Severns is entitled to a use variance allowing him to  
2 construct his residence over water under the terms of the applicable  
3 rule, SSMP Section 21A.61, above. Because the City did not apply that  
4 rule in this case to determine the waterward extension of the Severn's  
5 development, the matter should be remanded for the City to do so as  
6 provided by the last paragraph of SSMP Section 21A.61. As we  
7 concluded in Conclusion of Law I, above, the City erred in limiting  
8 construction to no more than 25 feet over water by application of  
9 Zoning Ordinance Section 4.13(c). It appears reasonable that Severns  
10 should be allowed by the City to construct his house and decks to, but  
11 not waterward of lines connecting respectively, the house and decks on  
12 either side of his lot as drawn in his application, Exhibit A-1, at  
13 the page labeled sheet 1 of 3. See, by analogy, SSMP Section 21.35(c)  
14 stating that residential structures shall not be located closer to the  
15 shoreline than adjacent structures. See also Department of Ecology v.  
16 Ballard Elks, 84 Wn.2d 551 (1974).

17 We affirm the City's permit condition limiting Severns to a  
18 building height of no more than 35 feet above average existing grade.  
19 This is the height limitation made applicable to residences on land by  
20 Table 2 of SSMP Section 21A.35, and is a proper incident of the use  
21 variance allowing this residence to extend over water.

### 22 III

23 Appellant also seeks a "dimensional variance" from the SSMP  
24 provisions relating to lot coverage and the size of docks. Applying  
25 the dual regulations once again, we conclude that DOE's WAC  
26 173-14-150(3)(a) requires a threshold showing that only a reasonable

ORDER

The actions of the City of Seattle and Department of Ecology are hereby reversed, and the matter is remanded to the City and Department for issuance and approval of a substantial development variance permit consistent with Conclusions of Law II and III, above.

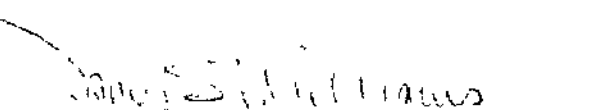
DONE at Lacey, Washington this 29<sup>th</sup> day of September, 1980.

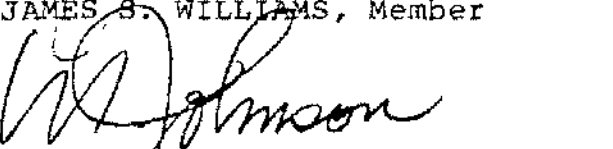
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